

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

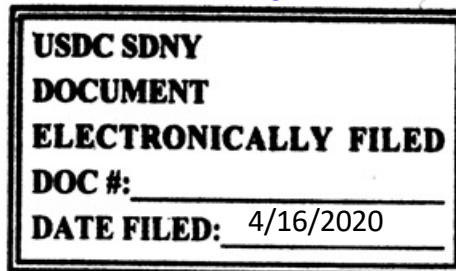
Lawrence T. Glickman, M.D.,

Plaintiff,

-against-

First UNUM Life Insurance Company,

Defendant.



1:19-cv-05908 (VSB) (SDA)

ORDER

STEWART D. AARON, United States Magistrate Judge:

On April 2, 2020, the Court issued an Opinion and Order requiring, among other things, that Defendant email to the Court for its *in camera* privilege review all pre-March 8, 2019¹ documents reflected on Defendant's Amended Privilege Log. (4/2/20 Opinion and Order, ECF No. 31, at 12.) Defendant today emailed to the Court unredacted copies of such documents, which the Court has reviewed.

Based upon the Court's review, the Court concludes that the redacted portions of such documents are not subject to the attorney-client privilege, given the fiduciary exception to the privilege in ERISA cases. "Under this exception, when legal advice is given to a client who is a fiduciary and concerns the exercise of fiduciary duties, the legal advice is subject to disclosure to the beneficiary." *McFarlane v. First Unum Life Ins. Co.*, 231 F. Supp. 3d 10, 13-14 (S.D.N.Y. 2017). Here, the legal advice was provided to Defendant regarding the exercise of Defendant's fiduciary duties. The Court also concludes that the work product doctrine does not apply to these documents. The Court finds that these documents relate to the administrative record and were

¹ According to Plaintiff, March 8, 2019 is the date when Unum made a final decision regarding Plaintiff's benefits.

not created because of litigation. Thus, the Court hereby ORDERS that unredacted versions of the documents provided to the Court today be produced to Plaintiff within fourteen (14) days of the date of this Order.

SO ORDERED.

DATED: New York, New York
April 16, 2020

A handwritten signature in black ink, reading "Stewart D. Aaron", is written over a horizontal line.

STEWART D. AARON
United States Magistrate Judge